

# EXHIBIT

# 3

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE

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ULTIMA SERVICES CORPORATION,  
Plaintiff,

v.

Case No.

U.S. DEPARTMENT OF AGRICULTURE,  
U.S. SMALL BUSINESS

2:20-cv-00041-  
DCLC-CRW

ADMINISTRATION, SECRETARY OF  
AGRICULTURE, AND ADMINISTRATOR  
OF THE SMALL BUSINESS  
ADMINISTRATION,  
Defendants.

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VIDEOCONFERENCE DEPOSITION OF  
HEIDI ATKINSON

DATE: Wednesday, April 20, 2022

TIME: 9:44 a.m.

LOCATION: Remote Proceeding

Front Royal, Virginia

REPORTED BY: Timothy Guevara, Notary Public

JOB NO.: 5192132

<p style="text-align: right;">Page 2</p> <p>1           A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFF ULTIMA SERVICES CORPORATION:</p> <p>3     MICHELLE SCOTT, ESQUIRE (by videoconference)</p> <p>4     Center for Individual Rights</p> <p>5     1100 Connecticut Avenue Northwest, Suite 625</p> <p>6     Washington, DC 20036</p> <p>7     scott@cir-usa.org</p> <p>8     (202) 833-8400</p> <p>9</p> <p>10    MICHAEL E. ROSMAN, ESQUIRE (by videoconference)</p> <p>11    Center for Individual Rights</p> <p>12    1100 Connecticut Avenue Northwest, Suite 625</p> <p>13    Washington, DC 20036</p> <p>14    rosman@cir-usa.org</p> <p>15    (202) 833-8400</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 4</p> <p>1           I N D E X</p> <p>2 EXAMINATION:                           PAGE</p> <p>3     By Ms. Scott                       8</p> <p>4     By Ms. Smith                      187</p> <p>5     By Ms. Scott                      214</p> <p>6</p> <p>7           E X H I B I T S</p> <p>8 NO.       DESCRIPTION                   PAGE</p> <p>9 Exhibit 0001   USDA Decision Memorandum for</p> <p>10           Acting Chief                   27</p> <p>11 Exhibit 0002   USSBA Acceptance Letter - 8/22/19   76</p> <p>12 Exhibit 0003   Letter from USDA to Teri Taylor</p> <p>13           at USSBA - 6/12/18           80</p> <p>14 Exhibit 0004   Letter from NRCS to Jawanda</p> <p>15           Jones at USSBA - 6/24/19       85</p> <p>16 Exhibit 0005   Letter from USSBA to Ryan Lorimer</p> <p>17           - 6/14/18                   118</p> <p>18 Exhibit 0006   Email Correspondence           123</p> <p>19 Exhibit 0007   Letter from USSBA to Terri Denison</p> <p>20           - 9/19/18                   131</p> <p>21 Exhibit 0008   Letter from USSBA to Danny Mandell</p> <p>22           at USDA - 9/20/18           133</p>
<p style="text-align: right;">Page 3</p> <p>1           A P P E A R A N C E S (Cont'd)</p> <p>2 ON BEHALF OF DEFENDANTS U.S. DEPARTMENT OF</p> <p>3 AGRICULTURE, U.S. SMALL BUSINESS ADMINISTRATION,</p> <p>4 SECRETARY OF AGRICULTURE, and ADMINISTRATOR OF THE</p> <p>5 SMALL BUSINESS ADMINISTRATION:</p> <p>6     K'SHAANI SMITH, ESQUIRE (by videoconference)</p> <p>7     United States Department of Justice</p> <p>8     950 Pennsylvania Avenue, Northwest</p> <p>9     Washington, DC 20530</p> <p>10    shaani.smith@usdoj.gov</p> <p>11    (202) 598-6856</p> <p>12</p> <p>13    JULIET GRAY, ESQUIRE (by videoconference)</p> <p>14    Department of Justice Civil Rights Division</p> <p>15    Employment Litigation Section</p> <p>16    150 M Street Northeast</p> <p>17    Washington, DC 20530</p> <p>18    juliet.gray@usdoj.gov</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p style="text-align: right;">Page 5</p> <p>1           E X H I B I T S (Cont'd)</p> <p>2 NO.       DESCRIPTION                   PAGE</p> <p>3 Exhibit 0009   Solicitation/Contract/Order for</p> <p>4           Commercial Items           139</p> <p>5 Exhibit 0010   Letter from NRCS to Shuraie Mackin</p> <p>6           at USSBA - 8/24/18           141</p> <p>7 Exhibit 0011   Letter from NRCS to Nancy Porzio</p> <p>8           at USSBA - 7/12/19           149</p> <p>9 Exhibit 0012   Letter from USSBA to Danny Mandell</p> <p>10           at USDA - 8/12/19           157</p> <p>11 Exhibit 0013   Letter from USDA to USSBA</p> <p>12           - 2/25/20                   159</p> <p>13 Exhibit 0014   Email from Howard Stover to Monet</p> <p>14           Chapman - 7/16/19           170</p> <p>15 Exhibit 0015   Email from Howard Stover to Monet</p> <p>16           Chapman - 7/16/19 (Duplicate)   172</p> <p>17 Exhibit 0016   Emails between Monet Chapman and</p> <p>18           Howard Stover - 7/16/19       173</p> <p>19 Exhibit 0017   Letter from USSBA to Howard Stover</p> <p>20           at USDA - 7/16/19           179</p> <p>21 Exhibit 0018   Email Correspondence           182</p> <p>22           (Exhibits attached.)</p>

<p style="text-align: right;">Page 206</p> <p>1 considerations relating to the renewal of contracts or</p> <p>2 requirements, or the exercise of options in contracts,</p> <p>3 including any contracts with plaintiff." First, does</p> <p>4 USDA renew contracts?</p> <p>5 A The -- we -- the -- the term "renewal" isn't</p> <p>6 an appropriate term. We use the -- the term "exercise</p> <p>7 an option" and so whenever a contract is awarded,</p> <p>8 it's -- it's typically awarded with the -- the first</p> <p>9 year and then four options, so a total of five years.</p> <p>10 So we consider it a five year contract, but it's</p> <p>11 really a one-year with four exercisable options and so</p> <p>12 USDA/NRCS has the ability to exercise an option on a</p> <p>13 contract.</p> <p>14 The term "renewal" would mean that we just</p> <p>15 automatically give the next five years to the same</p> <p>16 vendor and that's not appropriate. So whenever a</p> <p>17 contract period ends, a contract becomes a new award</p> <p>18 and we create a new contract and a new award at the</p> <p>19 end of the period of performance for a contract,</p> <p>20 including the option years.</p> <p>21 Q Does USDA or NRCS more specifically ever</p> <p>22 consider the contractor's performance when determining</p>	<p style="text-align: right;">Page 208</p> <p>1 you've ended the performance on one before you start</p> <p>2 next.</p> <p>3 Q Going back to Plaintiff Exhibit No. 1 on the</p> <p>4 first page, under the heading, "Issue/recommendation,"</p> <p>5 could you read the first sentence out loud, please?</p> <p>6 A No. Give me just one second.</p> <p>7 Q Sure.</p> <p>8 A Did you say -- I've got to get back to that</p> <p>9 screen. Hold on just a second. I navigated away.</p> <p>10 And you said Exhibit 1 and what page again, please?</p> <p>11 Q The first page.</p> <p>12 A Exhibit 1, first page, and then please</p> <p>13 repeat again for me what you want me to read?</p> <p>14 Q Sure. It's under the heading,</p> <p>15 "Issue/recommendation."</p> <p>16 A Yes.</p> <p>17 Q And that first sentence there --</p> <p>18 A It says, "Two of the" -- yes. "Two of the</p> <p>19 four existing NRCS regional LAPSS IDIQ contracts are</p> <p>20 nearing their maximum order value of \$10 million."</p> <p>21 Q Okay. Are you aware of any of the IDIQs</p> <p>22 reaching their ceiling?</p>
<p style="text-align: right;">Page 207</p> <p>1 whether to exercise an option?</p> <p>2 A Yes, we would. So if the contractor's</p> <p>3 performance had been unsatisfactory, that would be</p> <p>4 considered, and had remained unsatisfactory for</p> <p>5 reasons within their control. Again, it's important</p> <p>6 to note that just because it's unsatisfactory doesn't</p> <p>7 mean that you can't award it. It just wouldn't be</p> <p>8 typical, but -- but the -- the unsatisfactory</p> <p>9 performance would be considered. But if it were</p> <p>10 satisfactory or above, then it -- that's all that you</p> <p>11 would need to -- to provide award without further</p> <p>12 consideration.</p> <p>13 Q Based on your familiarity with the four</p> <p>14 regional IDIQs awarded to Ultima, did any of the IDIQs</p> <p>15 allow for options to be exercised early?</p> <p>16 A Yes. So what that -- what that means,</p> <p>17 though, what it means exercised early, that the -- the</p> <p>18 prior dollar amount had to have been met and that ends</p> <p>19 that period of performance and so you start a new</p> <p>20 period of performance with a new option and so that's</p> <p>21 called exercising an option early. Instead of waiting</p> <p>22 a year, you can do it in less than a year as long as</p>	<p style="text-align: right;">Page 209</p> <p>1 A Yes, that is -- that was factual that</p> <p>2 shortly after the issuance of this memo, two of the</p> <p>3 four had expended all of the dollars that had been</p> <p>4 placed on them and had reached what we call the</p> <p>5 ceiling.</p> <p>6 Q Did that include exercising options early to</p> <p>7 have access to all of the money allocated for the</p> <p>8 contract?</p> <p>9 A Yes, that's -- correct. That's exactly how</p> <p>10 it works. So, you know, and I'll just use a dollar</p> <p>11 amount for example. Say there's 10 million -- well,</p> <p>12 this was a maximum of 10 million. So that 10 million</p> <p>13 would have been split into five and so there'd have</p> <p>14 been 2 million for each year. So as soon as the first</p> <p>15 2 million was spent, it would require exercising</p> <p>16 option number two to spend 4 million, exercising</p> <p>17 option three to spend six, so on and so forth and so</p> <p>18 you could basically exercise all of those options in</p> <p>19 one year if -- if needed to have access to the full</p> <p>20 amount of money that was obligated against the</p> <p>21 contract.</p> <p>22 Q And can you recall how long it took for all</p>



Ultima Services Corporation v. US Department Of Agriculture

Heidi Atkinson

E R R A T A

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PAGE LINE CHANGE

15 11 11/2015

Reason: I recalled wrong date

15 13 11/2015

Reason: I recalled wrong date

17 10 ~~Stone~~ Change "Smith" to "Stonebraker"

Reason: I used wrong name

17 12 Change "Gaymullen Brown" to Gay Mullen-Brown

Reason: Corrected spelling

19 11+12 Change to Contractor Performance Assessment Reporting System

Reason: Correct name of the system

57 20,21+22 The size standard would be considered

Reason: I did not understand the question when asked

58 7 Change "No" to "yes"

Reason: I did not understand the question when asked

61 14 Change "No" to "yes"

I understood that she was asking about the vendor being awarded a contract, not the assignment of NAISO Codes by the Contractor to the contract in IAS

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100 8+9 Correct to "Contractor Performance Assessment Reporting System" Reason: Change to correct name of the system,

104 10

Change "Intergovernmental" to "internal" governmental Reason: correct pronunciation

Veritext Legal Solutions

215-241-1000 ~ 610-434-8588 ~ 302-571-0510 ~ 202-803-8830



# Ultima Services Cooperation v. US Department of Agriculture

## ERRATA - Cont

Pg 152 Line 4: The word "new" should be followed by "contract"  
Reason: "contract" should have been stated

Pg 106 Lines 14-22 + pg 107 1-3:

Corrected Response: An option cannot be exercised until the prior option period of performance has ended. It is possible to exercise the next option in the same calendar year if the first option is ended.

Reason: In my original response I was using the contracting term "option year" in the context of the period of performance, not in the context of calendar year, which could cause my response to be confused.



Ultima Services Corporation v. US Department Of Agriculture

Heidi Atkinson

ACKNOWLEDGMENT OF DEPONENT

I, Heidi Atkinson, do

hereby certify that I have read the foregoing  
pages and that the same is a correct  
transcription of the answers given by  
me to the questions therein propounded,  
except for the corrections or changes in form  
or substance, if any, noted in the attached  
Errata Sheet.

5/16/2022

Heidi Atkinson

DATE

SIGNATURE

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